

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARCELLO GALLUZZO, ET AL.,

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Plaintiffs,

08 Civ. 7610 (JGK)

- against -

PEERLESS MACHINE & TOOL CORP., ET AL.,

MEMORANDUM OPINION  
AND ORDER

Defendants.

JOHN G. KOELTL, District Judge:

The defendant Peerless Machine & Tool Corporation ("Peerless") has moved for leave to amend its answer to assert a statute of limitations defense.

Generally, leave to amend should be freely granted. See Foman v. Davis, 371 U.S. 178, 182 (1962). Leave to amend should be granted in the absence of "evidence of undue delay, bad faith or dilatory motive on the part of the movant, undue prejudice to the opposing party, or futility." Monahan v. New York City Dep't of Corr., 214 F.3d 275, 283 (2d Cir. 2000).

Defendant Peerless filed its motion prior to the time that the Court had set in the Scheduling Order for the assertion of additional defenses. The plaintiff has failed to show that it would suffer any prejudice from the assertion of the additional defense at this time. No discovery has yet occurred. The plaintiff has also failed to show that the defendant has asserted the defense in bad faith and appears to concede that

there may be issues of fact as to whether the defense is valid at least with respect to some claims. The Court could not decide that the defense is futile at this time, but the plaintiff can of course move to dismiss the defense or seek summary judgment against the defense at an appropriate time.

The motion to amend the answer is **granted without prejudice** to any motion to dismiss or for summary judgment with respect to the defense.

SO ORDERED.

Dated: New York, New York  
December 8, 2008

  
John G. Koeltl  
United States District Judge